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No. 82-1608

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**In the Supreme Court  
of the United States**

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OCTOBER TERM, 1983

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**SOUTH-CENTRAL TIMBER DEVELOPMENT,  
INC., *Petitioner,***

**v.**

**ESTHER WUNNICKE, Commissioner of  
Department of Natural Resources of the  
State of Alaska, et al., *Respondents,***

**and**

**KENAI LUMBER COMPANY, INC., *Respondent.***

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*On Writ of Certiorari to the  
United States Court of Appeals for the Ninth Circuit*

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**MOTION FOR LEAVE TO FILE AND BRIEF OF AMICI CURIAE  
PACIFIC RIM TRADE ASSOCIATION AND  
WASHINGTON CITIZENS FOR WORLD TRADE  
IN SUPPORT OF PETITIONER  
SOUTH-CENTRAL TIMBER DEVELOPMENT, INC.**

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**MOTION OF PACIFIC RIM TRADE ASSOCIATION AND  
WASHINGTON CITIZENS FOR WORLD TRADE  
FOR LEAVE TO APPEAR AS AMICI CURIAE  
IN SUPPORT OF PETITIONER  
SOUTH-CENTRAL TIMBER DEVELOPMENT, INC.**

Pacific Rim Trade Association and Washington Citizens for World Trade, nonprofit organizations whose members include companies, labor unions and public agencies engaged in or associated with foreign commerce in the Pacific Northwest, respectfully move pursuant to Rule 36.1 of the Rules of this Court for leave to appear as *Amici Curiae* and to file the attached Brief supporting Petitioner South-Central Timber Development, Inc. Petitioner and respondent State of Alaska have consented to the filing of the brief, but intervenor Kenai Lumber Company, Inc. has not answered *Amici's* request for consent.

Members of *Amici Curiae*<sup>1</sup> are engaged in or associated with the export of softwood logs from Pacific Northwest ports to Japan and other markets in the Far East. Much of the timber to supply that trade is harvested from state and local government lands in the region, and that supply is threatened by "primary manufacturing" statutes in Alaska, Oregon, Idaho, and California, which require logs sold and harvested from state lands to undergo initial milling within the state or within the United States.

The court below sustained the Alaska statute on

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<sup>1</sup> The membership of each is set forth at 1a-2a *infra*.

a theory of implied congressional consent to state restrictions on foreign trade. That decision tends to support restrictions imposed by "primary manufacturing" statutes in Oregon, Idaho and California,<sup>2</sup> and threatens the log export trade from those states as well as Alaska. Pressure has also arisen for similar legislation in Washington.<sup>3</sup> Essential economic interests of *Amici Curiae* are thus at stake in this case.

It is appropriate for the Court to consider the views of *Amici Curiae* because the economic impact of the Court's decision in this case will be felt not only in

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<sup>2</sup> The Alaska regulation is found at Pet. 19a-21a. At the time of this action, round logs underwent "primary manufacture" when they were sawed into "squares" or "cants" 12 inches on a side or less; present regulations reduce the maximum size to eight and three-quarter inches. Pet 20a.

California forbids the sale or resale of state timber to any "primary manufacturer" for use outside the United States unless it has been sawn into 4" by 12" dimensions. Cal. (Pub. Res.) Code § 4650.1 (West). Oregon requires logs removed from state or local government land to be "primarily processed in the United States," and it is a misdemeanor to purchase or sell timber from such lands for delivery outside the United States in log form. ORS 526.805-526.835. Idaho requires logs removed from state lands to be manufactured into lumber or timber products within the state. Idaho Code § 58-403.

<sup>3</sup> The following bills introduced in the 1983 Washington Legislature would have restricted log exports: SB 3293; SB 3440; HB 202; HB 443.

The Washington Attorney General in an Opinion dated October 29, 1975, concluded that a "primary processing" bill to be proposed in that session would be "indefensible" under the commerce clause of the federal constitution. AGLO 1975 No. 88.

Alaska, but in other Northwest states where *Amici* conduct their businesses. While the Alaska log export restrictions affect a substantial amount of trade, a much greater and economically more significant amount of export trade is restricted in these other western states, which have larger state holdings and larger export trade.

The purpose of the attached brief of *Amici Curiae* is to explain to the Court the nature and scope of foreign commerce in the Northwest that will be affected by the decision in this case, and its importance to the region and to the national economy.

Respectfully submitted,

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**BRIEF OF AMICI CURIAE  
PACIFIC RIM TRADE ASSOCIATION AND  
WASHINGTON CITIZENS FOR WORLD TRADE  
IN SUPPORT OF PETITIONER**

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**INTEREST OF AMICI CURIAE**

The interest of *Amici Curiae* is set forth in the  
Motion, *supra*, at i-iii.

### **SUMMARY OF ARGUMENT**

"Primary manufacturing" statutes protect local lumber mills by requiring privately-owned logs cut from state lands to undergo initial milling in the home state or in the United States. Their principal effect is to prohibit the export of such logs in an unprocessed condition to markets in the Far East. Statutes prohibiting log exports have been enacted not only in Alaska, but also in Oregon, Idaho and California, and have been proposed in Washington. These resource-rich states contain the nation's largest stands of Douglas fir and hemlock-spruce, which constitute the bulk of log exports and command a high price in export markets.

Foreign trade in unprocessed logs is critical to the economy of the Pacific Northwest and Alaska, because Northwest producers no longer compete in domestic markets east of the Rockies, and Alaskan producers must still depend, as they always have, on the export market. The log export trade is also important to the national economy. It returns billions of dollars each year to the United States from overseas purchasers, and contributes significantly to a positive trade balance in wood products. The interests at stake in this case are important and are entitled to protection under the Commerce Clause.



## ARGUMENT

1. The large export trade in unprocessed softwood logs from the Pacific Northwest to the Far East is important to the economy of the region.

The principal impact of regulations prohibiting the export of unprocessed logs is on foreign,<sup>4</sup> rather than interstate commerce.

The United States ranks third among nations in the size of its forest and is the leading producer of forest products as well as the largest consumer.<sup>5</sup> Foreign trade of the United States in logs and wood products runs in two directions. It consists of *imports* of softwood products from Canada, and of hardwood veneer and plywood from Asia; and *exports* of solid softwood products from the Pacific Northwest and Alaska to Japan and other countries in the Far East, and of pulp, paper and board products from the Pacific Coast and the South to all major world markets.<sup>6</sup> In 1981, for the first time, American traders achieved a positive trade balance (see Tables 7, 8 at 6a, 7a *infra*). The

<sup>4</sup> Scrutiny under the Commerce Clause is more rigorous when the state restraint affects foreign rather than interstate commerce. *Japan Line, Ltd. v. County of Los Angeles*, 441 U.S. 434, 448-449 (1979); L. Tribe, *American Constitutional Law*, § 6-20, at 380 (1979).

<sup>5</sup> *Wood Use — U.S. Competitiveness & Technology*, Congress of the United States, Office of Technology Assessment, (August, 1983), at 13-15, and Tables 2, 3 at 3a, 4a *infra*.

<sup>6</sup> *An Analysis of the Timber Situation in the United States 1952-2030*, Department of Agriculture, Forest Service (1982) (hereafter "Analysis of the Timber Situation"), Ch. 4, at 73-103.

largest surplus is generated in the Pacific Northwest, followed by Alaska (See Table 6 at 5a *infra*).

This foreign trade in wood products has become indispensable to the region. Formerly, the principal markets for Northwest wood products were domestic, and exports were treated as an outlet for domestic surplus.<sup>7</sup> Today, new technology for processing Southern pine, increased transportation costs, and competition from Canada have nearly eliminated Northwest softwood from markets east of the Rockies,<sup>8</sup> forcing Northwest producers to develop foreign markets for most of their non-region sales.

Exports have filled the gap. In 1982,<sup>9</sup> exports of solid wood products amounted to \$2.6 billion (see Table 8 at 7a *infra*), of which 40 percent (\$1.04 billion) was in unprocessed logs. Of that trade, over \$750,000,-

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<sup>7</sup> *Wood Use, supra*, at 64.

<sup>8</sup> It now costs as much to ship lumber from Oregon to Denver as from Oregon to Tokyo. In 1960, the Pacific Northwest supplied over 20% of the Northeastern lumber market. Today it supplies less than 2%. Oregon Legislature, Joint Legislative Committee on Trade and Economic Development, *Final Draft — The Log Export Issue: An Analysis* (1983) (hereafter "Joint Committee Report") at 62.

<sup>9</sup> In 1980, the last year for which dollar figures are available, log exports amounted to about \$85 million in Alaska, \$16 million in northern California, \$277 million in Oregon, and — significantly — \$1.034 billion in Washington, which does not restrict log exports. (F. Ruderman, *Production, Prices, Employment & Trade in Northwest Forest Industries, Second Quarter 1982*, Dept. of Agriculture, Forest Service, (1982) at 17-20).

000 consisted of softwood logs (mainly Douglas fir and hemlock-spruce). Eighty-five percent of those logs originated in the Pacific Northwest and Alaska (see Tables 6 and 7 at 5a-6a *infra*).

The principal log export customer is Japan. In 1979, exports of unprocessed logs to Japan accounted for over 80 percent of sales, virtually all destined for 20,000 family-owned Japanese mills which produce metric-size close-tolerance products for the Japanese housing market.<sup>10</sup> In Alaska, the industry exists principally to serve the Japanese market.<sup>11</sup> Japan is also

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<sup>10</sup> See C. Kerr & M. Wibbenmeyer, *Alaskan Export Policy* at 26, 33 (1979); *Analysis of the Timber Situation*, *supra*, at 77; D. Darr, "The Impacts of International Trade on Domestic Markets," *Proceedings: The Impact of Change on the Management of Private Forest Lands in the Northwest* (Portland, Oregon, March 29-31, 1978) (hereafter "Impacts"), at 29; *Joint Committee Report*, *supra*, at 63. Significant purchases were also made by the Chinese and Koreans.

<sup>11</sup> Although Alaska contains 119 million acres of forest, which is about one-sixth of the nation's total, only 11.1 million acres are classified as commercial timberland. Of that area, 7 million acres are in coastal Alaska, which is the only portion of the state that can be economically harvested on a commercial scale. Almost all of this timber is old growth softwood which has never been harvested, and is particularly suited to the export market. Harvests from coastal Alaska increased from 14 million cubic feet in 1952 to 119 million cubic feet in 1970, and softwood sawtimber harvests during the same period rose from 99 million board feet to 754 million. *Analysis of the Timber Situation*, *supra*, at 193-196.

There is no significant interstate market for Alaskan logs or timber products due to the distance from other states and to the price supports to U.S. flagships established by the Jones Act, 46 U.S.C. § 883.

the principal export purchaser of wood products from other Ninth Circuit states, and such shipments accounted for 89 percent of such export sales in 1980.<sup>12</sup>

**2. Douglas fir and hemlock-spruce logs are a valuable export commodity, and log export restrictions that protect local processors are a heavy burden on the nation's commerce.**

Douglas fir is one of the nation's most valuable softwood species, and hemlock-spruce is another. The largest concentration of Douglas fir lies west of the crest of the Cascades in Oregon and Washington. Hemlock-spruce also grows primarily west of the crest of the Cascades, with particularly high concentrations on the western slopes of the coast ranges in Oregon and Washington, on the Olympic peninsula in Washington, and in southeastern Alaska.<sup>13</sup>

These forests contain timber that is highly valued in the export market, particularly Japan, and commands a premium <sup>14</sup> which is estimated to range from 9 percent <sup>15</sup> to over 30 percent.<sup>16</sup> Sales of this timber make a special contribution to a balanced trade relationship.<sup>17</sup>

<sup>12</sup> Ruderman, *supra*, at 19.

<sup>13</sup> *Analysis of the Timber Situation*, *supra*, at 123-124, 186.

<sup>14</sup> *Wood Use*, *supra*, at 58, 183.

<sup>15</sup> *Joint Committee Report*, *supra*, at 51, 66.

<sup>16</sup> Industrial Forestry Association, *1976 Composite Log Sales Analysis* (1977).

<sup>17</sup> *Wood Use*, *supra*, at 58.

3. Restrictions on exports of logs cut from state lands will have an increasing impact on the log export trade in future years.

Federal restrictions on exports of logs removed from federal lands have limited the supply of logs for the export trade, and state limitations since the 1960's in Oregon, Idaho, California, and Alaska have also affected the market. As a result, about 70 percent of all exported logs have been harvested from private lands in these states. As timber is cut from these lands, they are reforested, but in the years prior to harvest of the reforested private lands, public lands will become an important source of export logs <sup>18</sup>. "Primary manufacturing" statutes or other restrictive legislation will thus be an increasing burden on the continued viability of the log export market.

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<sup>18</sup> *Analysis of the Timber Situation, supra*, at 131-132, 154-160, 183-187.

**CONCLUSION**

"Primary manufacturing" statutes are not merely a conceptual violation of the Commerce Clause; they threaten the entire log export segment of the wood products industry in precisely the way the Constitution intended to make impermissible. "Primary manufacturing" statutes are significant restraints on a large volume of foreign commerce and cannot be sustained by a process of implication from federal statutes that have no application to the states or to state timberlands.

The judgment of the Court of Appeals should be reversed.

November 25, 1983.

Respectfully submitted,

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**APPENDIX**

LIST OF MEMBERS OF  
PACIFIC RIM TRADE ASSOCIATION  
AND  
WASHINGTON CITIZENS FOR WORLD TRADE

**Pacific Rim Trade  
Association**

Atlas Steamship Co.,  
Northwest  
Brady-Hamilton Stevedore  
Co.  
Brusco Tow Boat Co.  
Burlington Northern, Inc.  
Caffal Bros. Forest  
Products, Inc.  
Cascade Shipping Co.  
Central Dock Co.  
Columbia River Bar Pilots  
Coos Bay Ship Pilots  
Crown Zellerbach  
Corporation  
Dant & Russel, Inc.  
Dillingham Ship Repair  
Dolphin Terminals  
East Orient Timber Co.  
Eureka Forest Products  
Fibrex & Shipping Co., Inc.  
General Steamship Corp., Ltd.  
International Log Sales/  
Bald Knob Land & Timber  
International Longshoremen's  
& Warehousemen's Union  
International Shipping Co.  
Jones Oregon Stevedoring  
Company  
Knappton Corporation  
Knutson Towboat Co./  
Log Storage  
Koontz Machine & Welding,  
Inc.

**Washington Citizens for  
World Trade**

Allman Hubble Tug Boat  
Company  
Anderson & Middleton  
Lumber  
ASARCO  
Norman Barnes & Co.  
Burlington Northern, Inc.  
Crown Zellerbach Corporation  
Evans Engine & Equipment  
Howard-Cooper Corporation  
John Hoyne  
International Longshoremen's  
& Warehousemen's Union  
ITT Rayonier, Inc.  
Jones Washington  
Stevedoring  
Mayr Brothers Logging  
Murray Pacific  
Pacific Lumber & Shipping  
Port of Anacortes  
Port of Bellingham  
Port of Everett  
Port of Grays Harbor  
Port of Longview  
Port of Olympia  
Port of Port Angeles  
Port of Tacoma  
E. R. Probyn  
Roderick Timber Company  
St. Regis Paper  
Scott Paper  
Seattle Stevedore Company  
Washington Contract  
Loggers Association

**Pacific Rim Trade  
Association**  
(Continued)

Longview Fibre Company  
Niedermeyer-Martin Co.  
North Bend Fabrication &  
Machine Inc.  
Olympic Steamship Co., Inc.  
Oregon Small Woodlands  
Association  
Al Pierce Lumber Co.  
Port of Astoria  
Port of Coos Bay  
Port of Portland  
Riedel International, Inc.  
Shaver Transportation Co.  
United States Trading  
Company, Inc.  
Van Natta Brothers  
Westbrook Exports  
(Reservation Ranch)  
Western Equipment Co.  
of Eugene  
Western Transportation Co.  
Westfall Stevedore Co.  
Weyerhaeuser Company  
Williams, Diamond & Co.

**Washington Citizens for  
World Trade**  
(Continued)

Washington Farm Forestry  
Association  
Washington Public Ports  
Association  
Washington Trucking  
Association  
Weyerhaeuser Company